



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

May 18, 2004

Jeffrey Brown
Town of Seabrook
PO Box 456
Seabrook, NH 03874-0456

**NOTICE OF NON-COMPLIANCE and
PERMIT REVOCATION – NCPR # 04-023**

RE: SEABROOK, SEABROOK REFUELING STATION, EXISTING UNDERGROUND STORAGE
TANK FACILITY (UST #A-0118871) (DES #199809102)

Dear Mr. Brown:

The New Hampshire Department of Environmental Services (“DES”) is hereby notifying you that the above-referenced facility, located at 87 Centennial Road, Seabrook, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On October 24, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to you. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation (“Notice”) will result in revocation of your Permit-to-Operate on August 16, 2004. This letter contains important compliance and procedural information. Please read it carefully.**

Env-Wm 1401.04 Registration

Env Wm 1401.04 requires a registration form to be on file at DES for all regulated UST systems. A review of DES records indicates that a registration form for the 500-gallon diesel generator UST system is not on file. A registration form shall be provided to DES for all unregistered UST systems.

2. Env-Wm 1401.11 Inventory Monitoring

Env-Wm 1401.11(d) requires inventory monitoring be conducted and inventory records be maintained on motor fuel, hazardous substance and bulk heating oil systems without secondary containment and leak monitoring for both tank and piping. DES has determined that complete inventory records were not being kept for the 8,000-gallon diesel (Tank 1) and the 8,000-gallon gasoline (Tank 2) UST systems. Inventory monitoring for both UST systems shall be corrected and be provided to DES.

Env-Wm 1401.11(f) requires non-exempt on-premise-use heating oil systems and emergency generator systems without secondary containment and leak monitoring for both tank and piping to perform inventory control by annual tank gauging. DES has determined that annual tank gauging was not being performed for the 500-gallon diesel generator UST system. Annual tank gauging or release detection methods as specified in Env-Wm 1401.29 and Env-Wm 1401.30 must be performed for the diesel generator UST system.

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3. Env-Wm 1401.21 Tank Standards for New Underground Storage Systems

Env-Wm 1401.21 requires a UST system completed certificate be permanently affixed and visible to the division inspector at the facility premises for all new UST systems. The DES inspector could not document a certificate posting. A certificate shall be posted at the facility and verification in writing that the certificate has been posted shall be provided to DES.

4. Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires overfill protection devices be installed and maintained in good working order on all UST systems. DES was unable to determine that the overfill protection devices for Tanks 1 and 2 are installed at the required 90% alert or 95% shut off level. Verification in writing that all of the overfill protection devices for both of the USTs are installed at the required 90% alert or 95% shut off level shall be submitted to DES.

5. Env-Wm 1401.26 Leak Monitoring for New Tanks and Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.26 and/or Env-Wm 1401.31 require that a leak monitor for double-wall tank systems continuously operate. The leak monitoring equipment and devices shall be tested annually for proper operation in accordance with manufacturer's requirements. DES has determined that the leak monitor for both of the USTs was not continuously operating and the tank systems were not temporarily closed. Leak monitor replacement or maintenance results or indication that the systems have been temporarily closed shall be provided to DES. The annual test documentation shall also be provided to DES.

6. Env-Wm 1401.30 Release Detection for Piping

Env-Wm 1401.30(g) requires release detection for suction or atmospheric piping when the check valve is not located directly below and as close as practical to the suction pump. DES has determined that the check valve on Tank 2 is located at the tank. Release detection as specified in Env-Wm 1401.30(e) must be performed for Tank 2.

Env-Wm 1401.32 Corrosion Protection for Steel Tanks

Env-Wm 1401.32 requires corrosion protection systems be tested within six (6) months of installation and every three (3) years thereafter. Also, monitors for impressed current systems shall be inspected every 60 days to ensure equipment is running properly. DES has determined that passing corrosion protection test results had not been submitted to DES since August 15, 1997 when both USTs had failing corrosion protection test results. The corrosion protection system must be repaired for both USTs and passing corrosion protection test results for the UST systems shall be provided to DES.

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8 Env-Wm 1401.33 Corrosion Protection for Piping

Env-Wm 1401.33 requires corrosion protection be installed on regulated piping prior to December 22, 1998. DES has determined that corrosion protection was not installed on the flexible piping for Tanks 1 and 2. The flexible piping must be isolated from the soil or corrosion protection must be installed.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0118871) shall be revoked effective **August 16, 2004**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

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If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,

COPY
Lynn A. Woodard, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 0600 0023 9934 4577

cc: Michael P. Nolin, Commissioner
Gretchen R. Hamel, Legal Unit Administrator
Fred McGarry, P.E., Chief Engineer, WMD
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